DECISION

Fair Work Act 2009
s.365—General protections

Eunjin Lee
v
P & K Total Services Pty Ltd
(C2023/4103)

DEPUTY PRESIDENT LAKE BRISBANE, 9 JANUARY 2024

Application to deal with contraventions involving dismissal – jurisdictional objection – employee or independent contractor – applicant dismissed – found to be employee – jurisdictional objection dismissed – matter to proceed to conference.

[1] Ms Eunjin Lee (the **Applicant**) lodged a general protections application involving dismissal to the Fair Work Commission (the **Commission**) on 11 July 2023. The Applicant claimed that adverse action was taken against her by P & K Total Services Pty Ltd (the **Respondent**) under ss. 340 and 351 of the *Fair Work Act 2009* (Cth) (the **Act**).

[2] The Respondent raised a jurisdictional objection that the Applicant was not dismissed. For the Applicant to be eligible to make a claim under s.365 of the Act, the Applicant will need to establish that she was dismissed in accordance with the definition in s.386 of the Act.

[3] The matter was heard by video using Microsoft Teams on 29 September 2023.

Background

[4] The Applicant commenced work with the Respondent on 22 May 2022, as a tiler and grouter. The relationship between the parties was not governed by any written agreement or employment contract.

[5] Mr Hyungju Lee is the Applicant's direct supervisor and a manager of the Respondent. Mr Hyoungjin Kim is the director of the Respondent.

[6] The Applicant contends that she was dismissed within the definition of s.386 of the Act. The Applicant states that she was an employee and was dismissed by the Respondent on 21 June 2023 through a call from Mr Lee. The Respondent states that the Applicant was an independent contractor, and in the alternative, she had voluntarily resigned on 4 May 2023.

[7] I have considered both jurisdictional objections surrounding whether the Applicant was an employee, and whether the Applicant was dismissed and provide my reasons below.

Preliminary matters

[8] Under s.596 of the Act, I have granted both parties permission to appear considering both parties were represented and there were no objections raised by either party.

[9] The Respondent had submitted amended submissions and additional witness statements outside the scheduled Directions. This was raised by the Applicant's representative raising potential procedural issues. This has been noted and due weight would be placed on the evidence. In the assessment of the jurisdictional objections, the additional evidence provided by the Respondent did not provide much probative value on the determination of these issues.

Is the Applicant an employee or an independent contractor?

[10] Section 386 of the Act provides:

> (1) A person has been ***dismissed*** if:
>
> > (a) the person's **employment** with his or her **employer** has been terminated on the **employer's** initiative; or
> >
> > (b) the person has resigned from his or her employment, but was forced to do so because of conduct, or a course of conduct, engaged in by his or her employer.

[11] The definition of an employer is determined in its plain and ordinary meaning.[1] The High Court of Australia in *Jamsek* and *Personnel Contracting* determined the case of whether a person is an employee or contractor.[2] The characterisation of the relationship is to be determined by reference only to the parties' legal rights and obligations.

[12] Where a comprehensive written contract is in place, this will be the primary source of the parties' legal rights and obligations, and it will be decisive in characterising the relationship. This will apply unless the contract is a sham, varied after it was made, or post agreement conduct, or context demonstrates that a term is legally ineffective.[3]

[13] Where no comprehensive written contract is in place, the High Court stated in *Jamsek* that the "multifactorial" test remains appropriate in identifying the applicable legal rights and obligations which is not derived from the post contract conduct.[4] Therefore, a multifactorial approach is to be adopted. In reliance on a considerable body of case law developed, general legal principles are applied to specific circumstances.[5] Multiple indicia are to be considered, though none alone are determinative. Analysis of the totality of the relationship between the parties is required to determine whether the relationship was one of an employee or independent contractor.

[14] In *Roy Morgan Research Pty Ltd v Commissioner of Taxation*, the Full Court of the Federal Court quoted with approval the following passage from *Hall (Inspector of Taxes) v Lorimer*:

"The object of the exercise is to paint a picture of the relationship from the accumulation of detail. The overall effect can only be appreciated by standing back from the detailed picture which has been painted, by viewing it from a distance and by making an informed, considered, qualitative appreciation of the whole. It is a matter of the overall effect of the detail, which is not necessarily the same as the sum total of the individual details. Not all details are of equal weight or importance in any given situation. The details may also vary in importance from one situation to another".[6]

[15] The Full Bench of the Commission adopted this passage in *Jiang Shen Cai trading as French Accent v Michael Anthony Do Rozario*, and summarised the general approach to distinguish between employees and independent contractors as follows:

"(1) In determining whether a worker is an employee or an independent contractor the ultimate question is whether the worker is the servant of another in that other's business, or whether the worker carries on a trade or business of his or her own behalf[7]: that is, whether, viewed as a practical matter, the putative worker could be said to be conducting a business of his or her own[8] of which the work in question forms part? This question is concerned with the objective character of the relationship. It is answered by considering the terms of the contract and the totality of the relationship.[9]

(2) The nature of the work performed and the manner in which it is performed must always be considered. This will always be relevant to the identification of relevant indicia and the relative weight to be assigned to various indicia and may often be relevant to the construction of ambiguous terms in the contract.[10]

(3) The terms and terminology of the contract are always important. However, the parties cannot alter the true nature of their relationship by putting a different label on it.[11] In particular, an express term that the worker is an independent contractor cannot take effect according to its terms if it contradicts the effect of the terms of the contract as a whole:[12] the parties cannot deem the relationship between themselves to be something it is not.[13] Similarly, subsequent conduct of the parties may demonstrate that relationship has a character contrary to the terms of the contract.[14]

(4) Consideration should then be given to the various indicia identified in *Stevens v Brodribb Sawmilling Co Pty Ltd* and the other authorities as are relevant in the particular context. For ease of reference the following is a list of indicia identified in the authorities:

- Whether the putative employer exercises, or has the right to exercise, control over the manner in which work is performed, place or work, hours of work and the like.

  Control of this sort is indicative of a relationship of employment. The absence of such control or the right to exercise control is indicative of an independent contract. While control of this sort is a significant factor it is not by itself determinative. In particular, the absence of control over the way in which work is performed is not a strong indicator that a worker is an independent contractor

where the work involves a high degree of skill and expertise.[15] On the other hand, where there is a high level of control over the way in which work is performed and the worker is presented to the world at large as a representative of the business then this weighs significantly in favour of the worker being an employee.[16]

"The question is not whether in practice the work was in fact done subject to a direction and control exercised by an actual supervision or whether an actual supervision was possible but whether ultimate authority over the man in the performance of his work resided in the employer so that he was subject to the latter's order and directions."[17] "[B]ut in some circumstances it may even be a mistake to treat as decisive a reservation of control over the manner in which work is performed for another. That was made clear in *Queensland Stations Pty. Ltd v Federal Commissioner of Taxation*, a case involving a droving contract in which Dixon J observed that the reservation of a right to direct or superintend the performance of the task cannot transform into a contract of service what in essence is an independent contract."[18]

- Whether the worker performs work for others (or has a genuine and practical entitlement to do so).

  The right to the exclusive services of the person engaged is characteristic of the employment relationship. On the other hand, working for others (or the genuine and practical entitlement to do so) suggests an independent contract.

- Whether the worker has a separate place of work[19] and or advertises his or her services to the world at large.

- Whether the worker provides and maintains significant tools or equipment.[20]

  Where the worker's investment in capital equipment is substantial and a substantial degree of skill or training is required to use or operate that equipment the worker will be an independent contractor in the absence of overwhelming indications to the contrary. [21]

- Whether the work can be delegated or subcontracted.[22]

  If the worker is contractually entitled to delegate the work to others (without reference to the putative employer) then this is a strong indicator that the worker is an independent contractor.[23] This is because a contract of service (as distinct from a contract for services) is personal in nature: it is a contract for the supply of the services of the worker personally.

- Whether the putative employer has the right to suspend or dismiss the person engaged.[24]

- Whether the putative employer presents the worker to the world at large as an

emanation of the business.[25]

Typically, this will arise because the worker is required to wear the livery of the putative employer.

- Whether income tax is deducted from remuneration paid to the worker.

- Whether the worker is remunerated by periodic wage or salary or by reference to completion of tasks.

  Employees tend to be paid a periodic wage or salary. Independent contractors tend to be paid by reference to completion of tasks. Obviously, in the modern economy this distinction has reduced relevance.

- Whether the worker is provided with paid holidays or sick leave.[26]

- Whether the work involves a profession, trade or distinct calling on the part of the person engaged.

  Such persons tend to be engaged as independent contractors rather than as employees.

- Whether the worker creates goodwill or saleable assets in the course of his or her work.

- Whether the worker spends a significant portion of his remuneration on business expenses.

It should be borne in mind that no list of indicia is to be regarded as comprehensive or exhaustive and the weight to be given to particular indicia will vary according to the circumstances. Features of the relationship in a particular case which do not appear in this list may nevertheless be relevant to a determination of the ultimate question.

(5) Where a consideration of the indicia (in the context of the nature of the work performed and the terms of the contract) points one way or overwhelmingly one way so as to yield a clear result, the determination should be in accordance with that result. However, a consideration of the indicia is not a mechanical exercise of running through items on a check list to see whether they are present in, or absent from, a given situation. The object of the exercise is to paint a picture of the relationship from the accumulation of detail. The overall effect can only be appreciated by standing back from the detailed picture which has been painted, by viewing it from a distance and by making an informed, considered, qualitative appreciation of the whole. It is a matter of the overall effect of the detail, which is not necessarily the same as the sum total of the individual details. Not all details are of equal weight or importance in any given situation. The details may also vary in importance from one situation to another. The ultimate question remains as stated in (1) above. If, having approached the matter in that way, the relationship remains ambiguous, such that the ultimate question cannot be answered with satisfaction one way or the other, then the parties can remove that ambiguity a term that declares the relationship to have one character or the other.[27]

> (6) If the result is still uncertain then the determination should be guided by "matters which are expressive of the fundamental concerns underlying the doctrine of vicarious liability" including the "notions" referred to in paragraphs [41] and [42] of *Hollis v Vabu*."[28]

[16] As there was no written contract in place between the parties, the multifactorial test will be considered to determine whether the Applicant was an employee or an independent contractor. It must be noted that the factors should not be approached as a checklist, but viewed as a whole, with some factors weighing more heavily than others. The overall effect of the culmination of factors must be considered in determining the existence of an employment relationship.

[17] The often-cited passage penned by Windeyer J in *Marshall v Whittaker's Building Supply Co*,[29] later quoted by the High Court of Australia in *Hollis v Vabu*, reads:

> "the distinction between an employee and an independent contractor is 'rooted fundamentally in the difference between a person who serves his employer in his, the employer's business, and a person who carries on a trade or business of his own'."[30]

[18] It is clear from the evidence that there was an appearance of an employment relationship rather than one of an independent contracting arrangement. The messages demonstrate that the Applicant does not appear to carry on a trade or business of her own.

[19] The Applicant receives a text through Kakaotalk from Mr Hyunju Lee regarding the requirements of her role. It appears that the Applicant cannot freely decline work provided by the Respondent. The text messages below had been translated from Korean to English.

[20] For instance, the messages on 19 May 2022 states:

> MS EUNJIN LEE: Can I please have a day off tomorrow?
>
> MR HYUNGJU LEE: Fuck off, you cannot take a day off. [ADDRESS REDACTED], Go there and roll the glue.[31]

[21] Another example are the messages on 26 May 2022:

> MR HYUNGJU LEE: 7 o'clock, must not be late for this one.
>
> MS EUNJIN LEE: Ah ok. You mean I need to start at 7??[32]

[22] The message on 14 May 2023 states:

> MR HYUNGJU LEE: Finish this house first and go to Logan.

[23] The message on 22 May 2023 states:

> MR HYUNGJU LEE: Go to this one first [ADDRESS REDACTED]. [33]

[24] The Applicant buys materials to complete the work. However, this was under the instructions of the Respondent. For instance, a message exchange on 23 August 2022 states the following:

> MR HYUNGJU LEE: Grout colour Grout colour (111) Balcony (300x600)… You need to buy and take them tomorrow.
>
> MS EUNJIN LEE: Buy all of them? One pack each?
>
> MR HYUNGJU LEE: Go where Hyoungjin is?[34]

[25] The Respondent submits that the terms of any oral contact between the Applicant and the Respondent are determined by concurrent conduct between the parties at the time of the Applicant's engagement. This assertion has not been substantiated with evidence and I do not accept this submission. The only evidence supported was the Kakao message on 27 April 2022.

> "MS EUNJIN LEE: Hello? Perhaps…are you looking for a grout sub?
>
> MR HYOUNGJIN KIM: I have just spoken to Shoebar and there is someone who is a sub but they are looking for a worker. If you need, I can give you Shoebar's number.
>
> MS EUNJIN LEE: Doesn't matter if it is only for a short term I will ring him"

[26] If the Applicant was engaged for short-term work, it does not explain the numerous properties that the Applicant attended for work from 22 May 2022 to at least 21 June 2023. The oral contract would have either been varied substantially, or a new oral contract would have been made when the Applicant continued to be engaged to undertake work from the Respondent. It could be argued that every contract starts with each property she was expected to attend, similar to a casual employee. If the Respondent intended to have the Applicant work as an independent contractor, this should have been put in writing to reflect what the arrangement was.

[27] The Applicant is under clear instruction of the tasks that she needs to perform. The Applicant does not control her hours, does not have the freedom to select how she completes her tasks and is given instructions every time she is required to attend a new site. There was no evidence to support this assertion besides their oral submissions.

[28] The Respondent submitted a series of tax invoices with the Applicant's ABN and an employee's list. There was evidence submitted which demonstrated that the Applicant was to buy her own equipment, have an ABN, and a requirement that the Applicant provide invoices and be responsible for any taxation. These could be indicators of an independent contracting relationship however they are not strong reflections of the reality of the working relationship.

[29] There are reasons why an employer may require employees to prepare their own invoices. Employers may disguise the employment relationship as one of an independent contractor to avoid tax, superannuation obligations and minimum entitlements prescribed by the NES. It is why *Hollis v Vabu,* does not limit the indicia in determining independent

contractor or an employee, nor is there an emphasis regarding weighting one factor more favourably than the other. The test is to obtain a full picture of the relationship between the parties.

[30] There are also questions regarding the credibility of the Respondent considering that the Respondent already had a list of employees on record, and the Applicant was the only person not on the Employee Renumeration List.[35] On a practical view of the evidence, the Applicant is not a person who would carry on a trade or business of her own. She was instructed how to do job, when to do her job, and where to do her job.

[31] On balance and considering the totality of the evidence, I am not satisfied that the Applicant was an independent contractor. The Applicant is an employee for the purposes of s.386 of the Act.

Was the Applicant dismissed?

[32] Section 386(1) of the Act relevantly provides that a person has been dismissed if:

(a) the person's employment with his or her employer has been terminated on the employer's initiative; or

(b) the person has resigned from his or her employment, but was forced to do so because of conduct, or a course of conduct, engaged in by his or her employer.

[33] The Full Bench in *Bupa Aged Care Australia Pty Ltd T/A Bupa Aged Care Mosman v Shahin Tavassoli* outlined the relevant authorities with respect to what it means for an employee's to be terminated at the initiative of the employer.[36] In short, it is not sufficient to simply demonstrate that the employee did not voluntarily leave their employment.[37]

[34] While it may be that some action on the part of the employer is intended to bring the employment to an end, it is not necessary to show the employer held that intention.[38] It is sufficient that the employer's conduct, would, on any reasonable view, be likely to bring the employment relationship to an end.[39]

[35] All the circumstances – including the conduct of both the employer and employee – must be examined.[40] In other words, it must be shown that "the act of the employer results directly or consequentially in the termination of the employment and the employment relationship is not voluntarily left by the employee. That is, had the employer not taken the action it did, the employee would have remained in the employment relationship."[41]

[36] On 4 May 2023, the Applicant sent a text message which states:

> *"Hello, how are you, I think I'll have to stop working from tomorrow. You put in lots of efforts for me but I don't think I am doing well enough to reciprocate your efforts…. So I am sending you this text. I am so sorry. Thank you so much for everything"*[42]

[37] The Respondent submits that the Applicant had freely left her employment from this date and therefore resigned from her employment.

[38] The Applicant lodged a Workcover claim on 8 June 2023 after seeking medical advice on an injury on her finger. The Applicant received surgery on 9 June 2023.

[39] On 13 June 2023, the Applicant stated that Mr Lee called her and stated that if she recommenced work immediately, the Respondent would pay her wages after the Workcover claim. Three addresses were provided to the Applicant for work.

[40] On 14 June 2023, Mr Lee called the Applicant regarding not working her shifts.

[41] On 20 June 2023, the Applicant informed the Respondent that Mr Lee's constant contact was burdensome, and the Applicant sought her doctor regarding when she could return back to work. The Applicant was informed she could return to work in 2 weeks.

[42] The Respondent contends that the Applicant was approved of 7 weeks of compensation by WorkCover and that the Applicant asked if she could work under her husband's ABN during the period of compensation. The Respondent states that this was denied.

[43] On 21 June 2023, the Applicant states Mr Lee had contacted her and informed her that Mr Hyoungjin Kim had decided to dismiss her. The Applicant responded by sending a text which expressed her thanks to Mr Kim for her time of employment.[43] There was no subsequent contact after this date.

[44] I do not accept the Respondent submission that the Applicant resigned from her employment on 4 May 2023. It is well established that a dismissal takes effect when the employment relationship has ended by the employer, rather than the termination of the employment contract.[44] Mr Hyungju Lee had provided an address for the Applicant to attend on 13 June 2023 which indicated that the employment relationship did not end.

[45] It is clear the Applicant lodged an invoice for work on 8 May 2023 to 12 May 2023 which indicated that she still working for the Respondent on 13 June 2023.[45]

[46] The only evidence that was provided between the party that had some probative value was the text message on 21 June 2023 was sent from the Applicant to the Respondent:

> *"Hello, I've heard from Hyungju that you decided to fire me. Thank you so much for letting me work for over a year. I hope you stay health. Thank you"*

[47] On balance, the Respondent had ended the employment relationship on its own initiative through a phone call by Mr Hyungu Lee on 21 June 2023. The Respondent did not provide a response regarding this message, nor had they continued to engage the Applicant in work after this message. It appeared that Mr Lee had the apparent authority to act on behalf of the Respondent to make this decision considering that the allocation of work coming from him, and many of the queries had gone through him.

[48] Even if Mr Hyoungjin Kim's version of events is correct regarding refusing a request from the Applicant to work under her husband's ABN, the employment relationship ended at

the initiative of the employer after 20 June 2023 when the Applicant was not offered any more work, and no response was sent after her message.

[49] The Applicant was dismissed at the initiative of the employer on 21 June 2023 in accordance with s.386(1) of the Act.

Costs Application

[50] The Respondent submitted a Costs Application under s611(2) or s400A of the Act. The basis of the Costs Application is that the Applicant demonstrated wilful disregard of the accurate facts known to her, and the engagement in the commencement and prolongation of an unfounded, baseless claim.

[51] It is clear through the analysis provided for each jurisdictional objection that the Respondent has misinterpreted the principles in its practical application.

[52] If the matter proceeds to the Federal Circuit Court of Australia, or the Federal Court of Australia, costs should be sought in this jurisdiction if the Respondent still believes that the Applicant had no reasonable basis of making the Application.

[53] I dismiss the Costs Application.

Conclusion

[54] The jurisdictional objections made by the Respondent are dismissed. The Costs Application made by the Respondent is dismissed. The matter will be programmed for conference in accordance with s.368 of the Act.

DEPUTY PRESIDENT

Appearances:

K. Park from Park & Co Lawyers on behalf of the Applicant.
J. Wang appearing as Counsel for the Respondent.

Hearing details:

29 September 2023
Brisbane
Hearing via Microsoft Teams

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[1] *Fair Work Act 2009* (Cth) s.12.

[2] *Asim Nawaz v Raiser Pacific Pty Ltd* [2022] FWC 1189 at [50]-[51] citing *Jamsek v ZG Operations Pty Ltd* [2022] HCA 2 ('**Jamsek**')*; CFMMEU v Personnel Contracting Pty Ltd* [2022] HCA 1 ('**Personnel Contracting**').

[3] *Jamsek* per Kiefel CJ, Keane and Edelman JJ at [40]-[62], *Personnel Contracting* per Gordon J at [172]-[178]:

[4] *Personnel Contracting* per Kiefel CJ, Keane and Edelman JJ at [33]-[34], [47], [61], per Gordon J at [174], [186]-[189].

[5] *Stevens v Brodribb Sawmilling Co Pty Ltd* (1986) 160 CLR 16; *Hollis v Vabu Pty Ltd* (2001) 207 CLR 21; *Abdalla v Viewdaze Pty Ltd* (2003) 122IR 215; *Roy Morgan Research Pty Ltd v Commissioner of Taxation* (2010) 184 FCR 448; *Jiang Shen Cai trading as French Accent v Michael Anthony Do Rozario* [2011] FWAFB 8307.

[6] *Hall (Inspector of Taxes) v Lorimer* [1992] 1 WLR 939; endorsed in *Roy Morgan Research Pty Ltd v Commissioner of Taxation* (2010) 184 FCR 448.

[7] *Marshall v Whittaker's Building Supply Co* (1963) 109 CLR 210, 217 per Windeyer J approved by the majority in *Hollis v Vabu* (2001) 207 CLR 21 [40]; *Stevens v Brodribb Sawmilling Co Pty Ltd* (1986) 160 CLR 16.

[8] *Hollis v Vabu* (2001) 207 CLR 21 [47] and [58].

[9] *Stevens v Brodribb Sawmilling Co Pty Ltd* (1986) 160 CLR 16

[10] Ibid.

[11] The parties cannot create something which has every feature of a rooster, but call it a duck and insist that everyone else recognise it as a duck": *Re Porter* (1989) 34 IR 179, 184 per Gray J; *Massey v Crown Life Insurance* [1978] 2 All ER 576, 579 per Lord Denning approved by the Privy Council in *AMP v Chaplin* (1978) 18 ALR 385, 389.

[12] *AMP v Chaplin* (1978) 18 ALR 385, 389.

[13] *Hollis v Vabu* (2001) 207 CLR 21 [58].

[14] *AMP v Chaplin* (1978) 18 ALR 385, 394.

[15] *Zuijs v Wirth Bros. Pty Ltd* (1955) 93 CLR 561, 571.

[16] *Hollis v Vabu* (2001) 207 CLR 21.

[17] *Humberstone v Northern Timber Mills* (1949) 79 CLR 389, 404 per Dixon J.

[18] *Stevens v Brodribb Sawmilling Co Pty Ltd* (1986) 160 CLR 16, 36.

[19] Ibid.

[20] Ibid 24.

[21] *Hollis v Vabu* (2001) 207 CLR 21 [47] and [58].

[22] *Stevens v Brodribb Sawmilling Co Pty Ltd* (1986) 160 CLR 16, 24.

[23] *Queensland Stations Pty Ltd v Federal Commissioner of Taxation* (1945) 70 CLR 539; *AMP v Chaplin* (1978) 18 ALR 385, 389.

[24] *Stevens v Brodribb Sawmilling Co Pty Ltd* (1986) 160 CLR 16, 24.

[25] *Hollis v Vabu* (2001) 207 CLR 21 [39].

[26] *Stevens v Brodribb Sawmilling Co Pty Ltd* (1986) 160 CLR 16, 24.

[27] *Massey v Crown Life Insurance* [1978] 2 All ER 576, 579 per Lord Denning.

[28] *Jiang Shen Cai trading as French Accent v Michael Anthony Do Rozario* [2011] FWAFB 8307 [30].

[29] *Whittaker's Building Supply Co* (1963) 109 CLR 210, 217.

[30] *Hollis v Vabu Pty Ltd* (2001) 207 CLR 21 [40].

[31] Witness Statement of Eunjin Lee, Annexure EJL-7.

[32] Ibid Annexure EJL-8.

[33] Ibid.

[34] Ibid Annexure EJK-7.

[35] Witness Statement of Hyoungjin Kim, Annexure HJK-03.

[36] *Bupa Aged Care Australia Pty Ltd T/A Bupa Aged Care Mosman v Shahin Tavassoli* [2017] FWCFB 3941.

[37] Ibid.

[38] Ibid; see also *Rheinberger v Huxley Marketing Pty Limited* (1996) 67 IR 154, 160-161; see also *O'Meara v Stanley Works Pty Ltd* [2006] AIRC 496 (11 August 2006); *Mohazab v Dick Smith Electronics (No 2)* (1995) 62 IR 200.

[39] *Rheinberger v Huxley Marketing Pty Limited* (1996) 67 IR 154, 160-161 cited in *Bupa Aged Care Australia Pty Ltd T/A Bupa Aged Care Mosman v Shahin Tavassoli* [2017] FWCFB 3941 at [31].

[40] *Whirisky v DivaT Home Care* [2021] FWC 650 at [77].

[41] *Mohazab v Dick Smith Electronics (No 2)* (1995) 62 IR 200 and *Bupa Aged Care Australia Pty Ltd T/A Bupa Aged Care Mosman v Shahin Tavassoli* [2017] FWCFB 3941 at [28].

[42] Witness Statement of Eunjin Lee, Annexure EJL-10

[43] Ibid, Annexure EJL-14.

[44] *Knott v Mr Godfrey Mantle T/A MGH Employment & Training Pty Ltd (Mantle Group Hospitality)* [2021] FWC 2498 at [33].

[45] Witness Statement of Hyoungjin Kim, Annexure HJK-1, Tax Invoice dated 15 May 2023.